

EXHIBIT J

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FROM: Marc Toberoff	PAGES (including cover): 60
DATE : 2/15/06	RE: Siegel, et al., v. Time Warner, Inc., et al. (Case No. CV 04-08776 RSWL (RZx)) – Summary Judgment

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Plaintiffs,

vs.

TIME WARNER INC., a corporation;
WARNER COMMUNICATIONS
INC., a corporation; WARNER BROS.
ENTERTAINMENT INC., a
corporation; WARNER BROS.
TELEVISION PRODUCTION INC., a
corporation; DC COMICS, a general
partnership; and DOES 1-10,

Defendants.

DC COMICS,

Counterclaimant,

vs.

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Counterclaim Defendants.

Case No. CV 04-08776 RSWL (RZx)

[Honorable Ronald S. W. Lew]

**PLAINTIFFS JOANNE SIEGEL
AND LAURA SIEGEL LARSON'S
NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Complaint filed: October 22, 2004]

Date: March 20, 2006

Time: 9:00 a.m.

Place: Courtroom 21, 5th Floor

[Memorandum of Points and
Authorities In Support of Motion
For Partial Summary Judgment;
Statement of Uncontroverted Facts
and Conclusions Of Law; Declaration
Of Marc Toberoff; Request For Judicial
Notice and [Proposed] Judgment Filed
Concurrently Herewith]

1 TO DEFENDANTS TIME WARNER INC., WARNER COMMUNICATIONS
2 INC., WARNER BROS. ENTERTAINMENT INC., WARNER BROS.
3 TELEVISION PRODUCTION INC., DC COMICS AND ITS COUNSEL OF
4 RECORD:

5 PLEASE TAKE NOTICE that on March 20, 2006, at 9:00 a.m. or as soon
6 thereafter as the matter may be heard, in Courtroom 21 of the above-entitled court,
7 Plaintiffs Joanne Siegel and Laura Siegel Larson ("Plaintiffs"), the widow and
8 daughter respectively of author Jerome Siegel ("Siegel") will and hereby do move
9 the Court for an order of partial summary judgment that Plaintiffs' Notice of
10 Termination pursuant to Section 304(c) of the Copyright Act of 1976, 17 U.S.C. §
11 304(c), which was served on Defendants on November 8, 2002 and filed with the
12 United States Copyright Office on November 20, 2002, is valid and effective; and
13 that as of November 17, 2004, the noticed termination date, Jerome Siegel's prior
14 grant(s) of "Superboy" to Defendants' alleged predecessors were terminated and
15 Siegel's original "Superboy" copyright was thereby recaptured by Plaintiffs, all in
16 accordance with 17 U.S.C. § 304(c).

17 Plaintiffs' motion is based on this notice of motion and motion, the following
18 memorandum of points and authorities, the declaration and proposed judgment filed
19 concurrently herewith, the Court Record, the argument of counsel, and any matters
20 of which the court may take judicial notice.

21
22 Dated: February 15, 2006

LAW OFFICES OF MARC TOBEROFF, PLC

23
24
25 By: 

26 Marc Toberoff
27 Attorneys for Plaintiffs JOANNE SIEGEL
28 and LAURA SIEGEL LARSON

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Counterclaim Defendants.

Case No. CV 04-08776 RSWL (RZx)

[Honorable Ronald S. W. Lew]

**PLAINTIFFS JOANNE SIEGEL
AND LAURA SIEGEL LARSON'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

[Complaint filed: October 22, 2004]

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[Statement of Uncontroverted Facts
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Judgment Filed Concurrently
Herewith]

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I. INTRODUCTION

Plaintiffs Joanne Siegel and Laura Siegel Larson ("Plaintiffs") are the widow and daughter, respectively, of Jerome Siegel ("Siegel"), the co-author of the world renowned comic book hero, "Superman," and the author of "Superboy." This case arises out of Plaintiffs' proper exercise on March 8, 2002 of their right under section 304(c) of the 1976 Copyright Act to recapture Siegel's original copyright in "Superboy" by serving statutory notice on the defendants herein ("Defendants") terminating Siegel's prior grant(s) of "Superboy" to Defendants' predecessor(s) (the "Termination"). Plaintiffs' Termination complied with all the requirements of 17 U.S.C. § 304(c) and 37 C.F.R. § 201.10, the regulations promulgated thereunder by the Register of Copyrights. On November 17, 2004, the noticed Termination date, all rights that Siegel had conveyed in "Superboy" to Defendants' predecessors, duly reverted to Plaintiffs.

Plaintiffs hereby move for partial summary judgment that their statutory Termination is valid and that Plaintiffs have thereby recaptured Siegel's "Superboy." This issue is ripe for summary judgment. There are no material issues of fact due to the judicial findings in a prior 1947 action between the parties' predecessors in the Supreme Court of the State of New York involving the same underlying facts relevant to this motion. The findings of fact and conclusions of law in the 1947 action regarding Siegel's creation/ownership of "Superboy" and the relationship between Siegel and Defendants' predecessors are binding on Defendants under the doctrines of *res judicata* or collateral estoppel and are dispositive of Plaintiffs' motion. The preclusive effect of the findings and conclusions in the 1947 state court action was explicitly confirmed in *Jerome Siegel and Joseph Shuster v. National Periodical Publications, et al.* 509 F.2d 909, 912-913 (2nd Cir. 1974), a subsequent *federal copyright action* against Defendants' predecessors.

II. UNDISPUTED FACTS

In or about 1947, Siegel and Joseph Shuster ("Shuster"), the original illustrator of "Superman," filed an action in the Supreme Court of the State of New York, County of Westchester (the "1947 Action") against Defendant DC Comics' predecessor, National Comics Publications, Inc. ("National") to determine the validity of various "Superman" contracts between Siegel and Shuster and National's predecessors, including Detective Comics, Inc. ("Detective"), and to determine the ownership of Siegel's creation "Superboy."

Pursuant to stipulation of the parties the action was tried before an Official Referee of the New York Supreme Court, Judge Addison Young ("Judge Young"). *See Jerome Siegel and Joseph Shuster v. National Periodical Publications et al.*, 364 F. Supp. 1032, 1034-1035 (S.D.N.Y. 1973) *aff'd* 509 F.2d 909, 912-913 (2nd Cir. 1974) (both the District Court and Second Circuit court describe the procedural background of the 1947 Action).

After trial of the 1947 Action, Judge Young rendered an opinion dated November 21, 1947 (the "1947 Opinion"). *Id.* On April 12, 1948, Judge Young signed detailed findings of fact and conclusions of law and rendered an interlocutory judgment from which no appeal was perfected. *Id.* After reviewing considerable documentary and testimonial evidence, Judge Young found that National owned "Superman" pursuant to an instrument dated March 1, 1938, but that Siegel was the sole author and owner of "Superboy." *See* Judge Young's Findings of Fact and Conclusions of Law (Nos. 25-26), dated April 12, 1948, attached as Exhibit "B" to both the Declaration of Marc Toberoff ("Toberoff Decl.") and the Request for Judicial Notice filed concurrently.

Settlement negotiations ensued, resulting in a stipulation of settlement by the parties dated May 19, 1948 ("1948 Stipulation"), and pursuant to the stipulation the entry in the New York Supreme Court of a final consent judgment dated May 21, 1948 ("1948 Consent Judgment"). *Siegel*, 364 F. Supp.

1 at 1034-1035; 509 F.2d at 912-913. *See* 1948 Stipulation and 1948 Consent
2 Judgment attached as Exhibits "B" and "C," respectively, to Toberoff Decl.

3 In 1969, Siegel and Shuster sought declaratory relief in the U.S. District
4 Court for the Southern District of New York regarding ownership of the renewal
5 copyright to "Superman," resulting on appeal in the Second Circuit's decision in
6 *Siegel, supra*. The Second Circuit found that Judge Young's opinion, findings
7 of fact, conclusions of law and resultant consent judgment after settlement of the
8 1947 Action were binding on the parties under the doctrine of *res judicata*, and
9 based thereon found that National owned the renewal copyright to Superman
10 under the March 31, 1948 Grant. *Siegel*, 509 F.2d at 912-913.

11 Plaintiffs' motion for partial summary judgment should be granted
12 because the findings of fact and conclusions of law in these prior litigations
13 between the parties' predecessors are dispositive of Plaintiffs' motion.

14 The Creation of Superman

15 The facts and conclusions of law set forth below are from the findings of
16 fact ("1948 FOF") and conclusions of law ("1948 COL") of Judge Young in the
17 1947 Action (*see* Toberoff Decl., Exh. B) and/or from the Second Circuit's
18 decision in *Siegel, supra*, except as otherwise noted:

19 In 1933, Jerome Siegel ("Siegel") conceived of the original idea of a
20 cartoon strip featuring a unique man of superhuman powers who would perform
21 feats for the public good. Siegel called him "Superman." 1948 FOF, Fact 9;
22 509 F.2d at 911. In 1934, Siegel wrote, and the artist, Joe Shuster ("Shuster"),
23 illustrated and "inked" multiple "Superman" comic strips intended for
24 publication in a newspaper format. 1948 FOF, Facts 8, 10; 509 F.2d at 911, 914.
25 By 1934, "Superman and his miraculous powers were completely developed [by
26 Siegel and Shuster]." 509 F.2d at 911, 914; *see* 1948 FOF, Facts 8-11.

27 In or about January–February 1938, when Detective expressed interest in
28 publishing Siegel and Shuster's 1934 Superman comic strip in a magazine

1 format, Siegel and Shuster chose to cut and paste their 1934 Superman comic
2 strip into separate panels to render their newspaper strip more suitable for a
3 magazine layout. 1948 FOF, Facts 17-18, 31-33; 509 F.2d at 911.

4 By an instrument dated March 1, 1938 (the "March 1, 1938 Grant"),
5 Siegel and Shuster agreed to the publication of their Revised 1934 Superman
6 Comic Strip by Detective in consideration for the sum of \$10 per page for this
7 thirteen page installment equal to a total of \$130. 1948 FOF, Facts 23-25; 509
8 F.2d at 911, 914. Detective published Siegel and Shuster's 1934 Superman
9 comic strip in the "June, 1938" issue of "Action Comics No. 1," which was first
10 published on April 18, 1938. 1948 FOF, Facts 30-33. Siegel and Shuster
11 thereafter continued to create "Superman" comic strips which were published in
12 succeeding issues by Detective. 1948 FOF, Fact 35.

13 On September 22, 1938, Siegel and Shuster entered into an agreement
14 with Detective (the "September 22, 1938 Agreement") to produce the "artwork
15 and continuity" for five existing comic strips created by them, including
16 "Superman." 1948 FOF, Facts 39, 46. In addition, the September 22, 1938
17 Agreement permitted Siegel and Shuster to create new comic book features,
18 provided National had a right of first refusal to accept or reject same within six
19 weeks of the submission thereof. 1938 Agreement, p.1, Toberoff Decl., Exh. E.

20 On December 19, 1939, Detective and Siegel and Shuster entered into a
21 supplemental agreement raising Siegel and Shuster's per page compensation rate
22 for the increasingly popular "Superman" comic strip. 1948 FOF, Fact 52.

23 Siegel's Creation Of "Superboy"

24 In or about 1938, Siegel conceived of a new comic strip series entitled
25 "Superboy." 1948 FOF, Fact 155. On November 30, 1938 Siegel submitted to
26 Detective for its acceptance or rejection under the terms of the September 22,
27 1938 Agreement, a written synopsis or summary of the character, conception
28 and plan for his "Superboy" comic strip series (the "Superboy Synopsis"), which

1 Siegel suggested could run in Detective's magazines, "More Fun Comics" or
2 "New Adventure Comics." 1948 FOF, Facts 155-156.

3 By letter to Siegel dated December 2, 1938, Detective did not elect to
4 purchase Siegel's "Superboy" within six weeks from its submission per the terms
5 of the September 22, 1938 Agreement. 1948 FOF, Facts 157-159.

6 Thereafter, in December, 1940, Siegel authored a complete original
7 "Superboy" story ("Superboy Story"; collectively referred to with the Superboy
8 Synopsis, as the "Siegel Superboy Material"). 1948 FOF, Fact 160. The Siegel
9 Superboy Material contained in detail and with particularity the unique
10 conception and character of "Superboy;" the continuity and dialogue for the first
11 "release" or "releases" of "Superboy;" and the plan for the future publication of
12 a "Superboy" comic book series. *Id.*

13 On or about December of 1940, Mr. Siegel submitted his Superboy Story
14 to Detective for its further consideration; however, Detective did not elect to
15 purchase the Superboy Story within six weeks of its submission per the
16 September 22, 1938 Agreement. 1948 FOF, Facts 160, 162.

17 Jerome Siegel entered the U.S. Army in July, 1943 to serve his country
18 during World War II. *See* 1948 FOF, Fact 182. While Siegel was stationed
19 abroad, Detective, without notice to Siegel used and published the Siegel
20 Superboy Material as an illustrated comic book story entitled "Superboy" in the
21 body of the magazine issue, More Fun Comics, No. 101, which was published
22 and issued for sale in December, 1944. 1948 FOF, Fact 163-166, 168.
23 Thereafter, Detective released "Superboy" comic strips in magazines bi-monthly
24 until February, 1946 and monthly thereafter. 1948 FOF, Facts 169.

25 Detective's first "comic strip release entitled SUPERBOY published in
26 December of 1944 [in More Fun Comics, No. 101] embodied and was based
27 upon the idea, plan and conception contained in the [Superboy Story] submitted
28 by...SIEGEL to DETECTIVE COMICS, INC. in December of 1940," 1948

1 FOF, Fact 165; and “embodied and was based upon the idea, plan and
2 conception contained in the [Superboy Synopsis] dated November 30, 1938.
3 1948 FOF, Fact 164.

4 In fact “[a]ll of the comic strip material published [by Detective] under the
5 title SUPERBOY was based upon the idea, plan, conception and direction
6 contained in the [Siegel Superboy Material].” 1948 FOF, Facts 171-172.

7 “SUPERMAN...did not contain the plan, scheme, idea or conception of
8 the comic strip SUPERBOY as it was later submitted by...SIEGEL to
9 DETECTIVE COMICS, INC. in [the Siegel Superboy Material],” 1948 FOF,
10 Fact 166; and “did not contain the plan, scheme, idea or conception of the comic
11 strip SUPERBOY as published by DETECTIVE COMICS, INC. and by
12 NATIONAL COMICS PUBLICATIONS, INC from December, 1944 until
13 [April, 1948].” 1948 FOF, Fact 167.

14 “Siegel is the originator and the sole owner of the comic strip feature
15 SUPERBOY.” 1948 COL, No. 25. “Siegel, as the originator and owner of the
16 comic strip feature ha[d] the sole and exclusive right to create, sell and distribute
17 comic strip material under the title SUPERBOY of the type and nature
18 [t]heretofore published [by Detective and National].” 1948 COL, No. 26.

19 Upon Siegel’s return from the war in January of 1946, Detective entered
20 into negotiations with Siegel to purchase the Siegel Superboy Material and to
21 hire Siegel to write additional “Superboy” comic strips. However, no agreement
22 was reached. 1948 FOF, Facts 183-184.

23 Based on his above findings of fact and conclusions of law, Judge Young
24 concluded in the 1947 Action that the defendants National *et al.* be “perpetually
25 enjoined and restrained from creating, publishing selling or distributing any
26 comic strip material of the nature now and heretofore sold under the title
27 SUPERBOY, or any other comic strip material made in imitation of the
28 conception, characters, nature, incidents, actions or plot of [Siegel’s] comic strip

1 SUPERBOY..." 1948 COL, No. 25; and that defendants "account to... Siegel
2 for all profits derived from the publication, sale and distribution of all comic
3 strip material entitled SUPERBOY..." 1948 COL, No. 27; 1947 Opinion,
4 Toberoff, Exh. A, pp. 11-12.

5 Following Judge Young's opinion, findings of fact and conclusions of
6 law, settlement negotiations ensued, resulting in the 1948 Stipulation of
7 settlement between the parties. Toberoff Decl., Exh. C. In the 1948 Stipulation,
8 Siegel, in exchange for a settlement payment, agreed, in part, that National shall
9 have the exclusive rights to "Superboy." 1948 Stipulation, ¶¶ 9-10, *Id.* Two
10 days later, the New York Supreme Court entered on May 21, 1948 a final
11 consent judgment pursuant to the 1948 Stipulation. Toberoff Decl., Exh. D.

12 On December 23, 1975, Siegel and Shuster entered into an agreement
13 with Warner Communications Inc. (the "1975 Agreement"), the alleged parent
14 company of National, which, in exchange for Siegel and Shuster's
15 acknowledgement that Warner Communications, Inc. was the exclusive owner
16 of "*Superman*," gave Siegel and Shuster modest annual payments, certain
17 medical benefits and credit as the "creators" of "Superman." The 1975
18 Agreement did not mention "Superboy."

19 Plaintiffs' Notice of Termination

20 On November 8, 2002, Plaintiffs availed themselves of their legal right
21 under the U. S. Copyright Act (17 U.S.C. § 304 (c)) to recapture the "Superboy"
22 copyright by serving notice on the Defendants that Plaintiffs were terminating
23 the grant of "Superboy" in the 1948 Stipulation and to the extent relevant, the
24 1975 Agreement (the "Termination Notice"). Termination was noticed to take
25 effect on November 17, 2004 (the "Termination Date") sixty-six years after
26 Siegel had created "Superboy." Plaintiffs' Termination duly complied with all
27 the requirements of 17 U.S.C. § 304(c) and 37 C.F.R. § 201.10., the regulations
28 promulgated thereunder by the Register of Copyrights.

III. LEGAL ANALYSIS

A. Standard Of Review

Plaintiffs are entitled to the entry of summary judgment in their favor if based on the pleadings and evidence on file, there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). "Partial summary judgment" where the Court disposes of some but not all claims or issues within a claim, is also permitted. Fed. R. Civ. P. 56(c), (d).

The instant motion presents a classic example of an issue of law that is ripe for summary judgment, namely the validity of Plaintiffs' Termination under 17 U.S.C. § 304(c). There are no material issues of fact because the relevant underlying facts were previously adjudicated and determined in the 1947 Action and binding herein under the doctrines of *res judicata* and collateral estoppel.

B. The Termination Provisions Of The 1976 Copyright Act

The legislative purpose of the termination provisions are best understood by reviewing the policies underlying its enactment and its predecessor reversionary renewal provision under the 1909 Copyright Act (the "1909 Act").

1. The Renewal Term Under The 1909 Copyright Act

Under the 1909 Act, copyright protection was divided into two separate, consecutive terms of twenty-eight years: the "initial" term and the "renewal" term. 17 U.S.C. § 24. The renewal term was intended to be a new grant reverting to the author at the end of the initial term, not merely an extension thereof. In fashioning the renewal term Congress was aware that authors had relatively little bargaining power. The renewal term was intended to protect authors who may have struck imprudent bargains by allowing them to realize a portion of the increased economic value of their work. *See Stewart v. Abend*, 495 U.S. 207, 217-20, 110 S. Ct. 1750, 109 L. Ed.2d 184 (1990) (legislative and judicial history of the 1909 Act's renewal provision).

This legislative purpose of the renewal term was emasculated by the

1 Supreme Court's decision in *Fred Fisher Music Co. v. M. Witmark & Sons*, 318
2 U.S. 643, 657-59 (1943) which held that authors were able to assign their
3 interest in the renewal term during the initial term. After *Fred Fisher*,
4 publishers routinely insisted that authors assign *both* copyright terms in one
5 initial transfer, eliminating the reversionary renewal right under the 1909 Act
6 and the author's ability to share in his work's success. *Stewart*, 495 U.S. at 219.

7 **2. The 1976 Copyright Act Was Designed To Give Authors**
8 **And Heirs Full Benefits Of The Extended Renewal Term**

9 On January 1, 1978, the 1976 Copyright Act (the "1976 Act") went into
10 effect, and with it, changes to copyright law that significantly enhanced the
11 rights of authors and their heirs. 17 U.S.C. § 101 *et seq.* (1978). The 1976 Act
12 extended the renewal term from 28 to 47 years for works, such as "Superboy,"
13 that were in their renewal term when the 1976 Act took effect. 17 U.S.C. §
14 304(a). Congress intended to give the benefit of the additional 19 years of
15 copyright protection to authors and their heirs, like Siegel and Plaintiffs, rather
16 than to grantees, like Defendants, for whom the extended term would have been
17 an unjustified windfall. H.R. Rep. No. 94-1476 ("H. Rep."), at 140 (1976).

18 Accordingly, Congress coupled the renewal term extension with the
19 creation of a *new* right of authors and their statutory heirs (principally surviving
20 spouse, children and grandchildren) to recapture the renewal copyright in their
21 works by terminating any prior grant thereof "executed before January 1, 1978,"
22 *i.e.*, before the 1976 Act went into effect.¹ 17 U.S.C. § 304(c). Such prior

23
24 ¹ The Sonny Bono Copyright Term Extension Act of 1998 ("CTEA") became effective
25 October 27, 1998 and extended the term of protection for works created prior to
26 January 1, 1978 from seventy-five to ninety-five years, 17 U.S.C. § 304(b). As with
27 the 1976 Act's original term extension, Congress intended this second term extension
28 as a benefit to authors and their families, not as a windfall for grantees. Congress
therefore once again coupled the extended term with an inalienable termination right
for authors (and their surviving spouses, children and grandchildren) so they could
recapture the additional twenty years of copyright protection. See 17 U.S.C. § 304(d).
See S. Rep. No. 104-315, at 22-23 (1996); 3 *Nimmer on Copyright* § 9.11[B] [1].

1 grants are terminable at any time during a five-year window beginning 56 years
2 after copyright in the work had originally been secured. 17 U.S.C. § 304(c)(3).

3 The termination right cannot be vitiated by contract and remains
4 effective “notwithstanding any agreement to the contrary.” 17 U.S.C. §
5 304(c)(5). The termination clause provides in pertinent part:

6 “In the case of any copyright subsisting in either its first or renewal term
7 on January 1, 1978, other than a copyright in a work made for hire, the
8 exclusive or nonexclusive grant of a transfer or license of the renewal
9 copyright or any right under it, executed before January 1, 1978, by any
10 of the persons designated by subsection (a)(1)(C) of this section, otherwise
11 than by will, is subject to termination under the following conditions:

12 * * *

13 (5) Termination of the grant may be effected notwithstanding any
14 agreement to the contrary, including an agreement to make a will or to
15 make any future grant. 17 U.S.C. §§ 304(c) and 304(c)(5)

16 As the Supreme Court noted in *Mills Music Inc. v. Snyder*, 469 U.S. 153,
17 173, 105 S. Ct. 638, 8 L.Ed. 556 (1985): “The principal purpose of... § 304 was
18 to provide added benefits to authors.... More particularly, the termination right
19 was expressly intended to relieve authors of the consequences of ill-advised and
20 unremunerative grants...” *Mills Music*, 469 U.S. at 172-73 citing H.R. Rep. No.
21 94-1476, at 124 (1976). In devising Section 304(c), Congress recognized that
22 authors commonly agree to one-sided copyright grants that publishers with far
23 greater bargaining power design to be as expansive as possible in exchange for
24 as little payment as possible. H.R. Rep. at 124. The results are often supremely
25 unfair, as when a work proves financially successful for many years, but
26 enriches only the grantee and not the author or the author’s family.

27 Indeed, the Supreme Court recently recognized the overall intent of the
28 1976 Act to “enhance the author’s position” and to adjust “the author/publisher
balance,” emphasizing the “inalienable authorial right to revoke a copyright
transfer.” *N.Y. Times v. Tasini*, 533 U.S. 483, 121 S. Ct. 2381, 150 L. Ed. 2d 500
(2001); see also *Stewart*, 495 U.S. at 230 (“[1976 Act] provides an inalienable

1 termination right"); *See Marvel Characters, Inc. v. Simon*, 310 F.3d 280 (2d Cir.
2 2002) (pre-1978 settlement agreement cannot bar author's termination right).

3 Admittedly, the termination right lies in stark contrast to ordinary state
4 contract law principles, as it empowers authors and their statutory heirs to
5 terminate prior grants of rights *without cause*, regardless of the contracting
6 parties' promises, intent or the grantee's expectations at the time the grant was
7 made. 17 U.S.C. §304(c)(5). Congress clearly determined that giving authors
8 and their families an equal opportunity to benefit from each extension of the
9 copyright renewal term is of paramount importance.

10 **C. Defendants Are Bound By The 1947 State Action**

11 It is well established that the findings in a prior litigation are binding on
12 the parties or their successors in a subsequent litigation involving the same facts
13 under the doctrines of *res judicata* and/or collateral estoppel. *Kamilche Co. v.*
14 *United States*, 53 F.3d 1059, 1062 (9th Cir. 1995).

15 The Full Faith and Credit Act, 28 U.S.C. § 1738, further commands that a
16 federal court must accord a state court's resolution of issues the same preclusive
17 effect as would be accorded in the rendering court. *See Matsushita Elec. Indus.*
18 *Co. v. Epstein*, 516 U.S. 367, 116 S. Ct. 873, 878, 134 L. Ed. 2d 6 (1996); *Allen*
19 *v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). This rule
20 generally applies regardless of whether the state court construes civil, criminal,
21 state or federal law. *Allen*, 449 U.S. at 104; *see* 18-133 *Moore's Federal*
22 *Practice-Civil* § 133.30. Preclusion applies to issues raised as well as to issues
23 that could have been raised at the time of the earlier action. *Migra v. Warren*
24 *City Sch. Dist. Bd. of Ed.*, 465 U.S. 75, 84, 104 S.Ct. 892, 79 L.Ed. 2d 56 (1984).

25 The law is also well settled that a federal court determines the preclusive
26 effect of the findings and conclusions in a prior state court action by looking to
27 the laws of that state to determine whether principles of *res judicata* or collateral
28 estoppel bar the parties' respective arguments. *Pension Trust Fund for Oper.*

1 *Engineers v. Triple A Machine Shop, Inc.*, 942 F.2d 1457, 1464-1465 (9th Cir.
2 1991, citing *Migra* 465 U.S. 75, 81.

3 New York has adopted a transactional approach to the doctrine of *res*
4 *judicata* or claim preclusion. *Garguili v. Thompkins*, 790 F.2d 265, 269 (2d Cir.
5 1986); *Reilly v. Reid*, 45 N.Y.2d 24, 29-30 (1978). If a subsequent claim arises
6 from the same "factual grouping" as a previously resolved claim, the subsequent
7 claim is barred regardless of whether the two suits are based on different legal
8 theories or seek different remedies. *Smith v. Russell Sage College*, 54 N.Y.2d
9 185, 192 (1981); *Reilly*, 45 N.Y.2d at 29-30; *see also EFCO Corp. v. U.W.*
10 *Marx, Inc.*, 124 F.3d 394, 397 (2d Cir. 1997). Thus, in New York "once a claim
11 is brought to a final conclusion, all other claims arising out of the same
12 transaction or series of transactions are barred..." *O'Brien v. City of Syracuse*,
13 54 N.Y.2d 353, 357 (1981).

14 "Collateral estoppel prevents a party from re-litigating an issue decided
15 against that party in a prior adjudication" in which that party had a "full and fair
16 opportunity" to litigate. *Fuchsberg & Fuchsberg v. Galizia*, 300 F.3d 105, 109
17 (2d Cir. 2002) quoting *Johnson v. Watkins*, 101 F.3d 792, 794-95 (2d Cir. 1996)
18 and *Schwartz v. Pub. Adm'r*, 24 N.Y.2d 65, 71 (1969)). The preclusive effect
19 extends to issues not specifically addressed but which "by necessary implication
20 ... [are] contained in that which [was] explicitly decided." *Id.*, quoting *Norris*
21 *v. Grosvenor Mktg. Ltd.*, 803 F.2d 1281, 1285 (2d Cir. 1986). The fundamental
22 policies behind collateral estoppel (issue preclusion) are to increase judicial
23 efficiency, to reduce the number of inconsistent rulings and to promote the
24 finality of judgments. *Murphy v. Gallagher*, 761 F.2d 878, 882 (2d Cir. 1985).

25 The application here of the *res judicata* and collateral estoppel doctrines is
26 further based on good reason. The findings and conclusions of Judge Young in
27 1948, nine years after the events in question, are far more factually reliable than
28 any findings that can presently be made. There is little about the operative facts

1 regarding Siegel's creation of "Superboy" and his dealings with Detective
2 regarding "Superboy" that can be supplied by new testimonial evidence. Siegel
3 is no longer alive and the majority of those who dealt with "Superboy" at the
4 time of its creation by Siegel are likely also dead. The findings and conclusions
5 in the 1947 Action which concerned the same facts as this motion provide a
6 much more reliable index of the truth than anything that can be mustered by
7 Defendants today. *See Picture Music, Inc. v. Bourne, Inc.*, 314 F. Supp. 640,
8 652 (S.D.N.Y. 1970). "The subsequent effect of collateral estoppel...is a result
9 which should be welcomed to avoid the task of reconsidering issues that have
10 already been settled by another competent tribunal." *Vernitron Corp. v.*
11 *Benjamin*, 440 F.2d 105,108 (2d Cir. 1971), *cert. denied*, 402 U.S. 987, 29 L.
12 Ed. 2d 154, 91 S. Ct. 1664 (1971) *citing Klein v. Walston Co.*, 432 F.2d 936 (2d
13 Cir. 1970).

14 Thus, the findings of fact and conclusions of law in the 1947 Action
15 should be accepted as given premises of which there can be no dispute.

16 **D. Plaintiffs' Duly Exercised Their Termination Right**

17 **1. Plaintiffs' Termination Complied with the Copyright Act**

18 Plaintiffs fully satisfied the requirements for termination set forth in 17
19 U.S.C. § 304(c) ("Section 304(c)");

20 • Section 304(c) applies to "any copyright ... subsisting in its renewal term
21 on the effective date of the [1976 Act]." 17 U.S.C. § 304(c). Copyright in
22 "Superboy" subsisted in its renewal term on the effective date of the 1976 Act,
23 January 1, 1978. Copyright in the serialized magazine, *More Fun Comics*, No.
24 101, was secured on November 23, 1944 with the Register of Copyrights under
25 copyright registration number B653651 in the name of Detective and renewed
26 on July 17, 1972 in the name of National, claiming as proprietor of copyright,
27 under copyright renewal registration number R532582. *See Toberoff Decl.*,
28 Exh. F. The serialized magazine issue, "More Fun Comics 101" published the

1 Siegel Superboy Material. 1948 FOF, Fact 164, 165 [“[Detective’s] comic strip
2 release entitled SUPERBOY published in December of 1944 embodied and was
3 based upon the idea, plan and conception contained in the [Superboy Story]
4 submitted by...SIEGEL to DETECTIVE COMICS, INC. in December of 1940,”
5 and “embodied and was based upon the idea, plan and conception contained in
6 the [Superboy Synopsis] dated November 30, 1938.”].²

7 • Section 304(c) applies only to transfers or licenses “executed before
8 January 1, 1978,” by the author, the author’s surviving spouse, children (or
9 certain other designated persons) 17 U.S.C. § 304(c). The grants terminated by
10 Plaintiffs were the 1948 Stipulation and the 1975 Agreement (to the extent
11 relevant), both pre-1978 documents. No post-1978 grant of rights in “Superboy”
12 by Siegel or his heirs exists and none have been alleged by Defendants.

13 • Section 304(c) allows termination by the author’s “widow” and
14 “surviving children” which together own and are entitled to exercise more than
15 one-half of the author’s termination interest under the statute. 17 U.S.C.
16 §304(c)(1) and (c)(2)(A) and (B). Plaintiff Joanne Siegel is the author Siegel’s
17 widow and she therefore owns 50% of Siegel’s termination interest. 17 U.S.C.
18 §304(c)(2)(A); *see* Counterclaim, ¶ 2. Plaintiff Laura Siegel Larson is one of
19 Siegel’s two children, and she therefore owns 25% of Siegel’s termination
20 interest. 17 U.S.C. §304(c)(2)(A); *see* Counterclaim, ¶ 3. Together Plaintiffs
21 own and constitute the more than one-half of Siegel’s termination interest
22 required to effect the Termination. 17 U.S.C. §304(c)(1).

23 • Section 304(c) requires the termination notice to “state the effective date

24 ² In fact, Judge Young found that “[a]ll of the comic strip material published [by
25 Detective prior to the trial of the 1947 Action in April, 1948] under the title
26 SUPERBOY was based upon the idea, plan, conception and direction contained in the
27 [Siegel Superboy Material].” 1948 FOF, Facts 171-172. As with More Fun Comics,
28 No. 101, statutory copyright for these periodical publications was similarly secured
through registration by Detective (and later National) and renewal by National with the
Register of Copyrights. *See* Termination Notice, pp. 6-7, Toberoff Decl., Exh. G.

1 of termination, which shall fall within the five-year period” “beginning at the
2 end of 56 years from the date copyright was originally secured,” 17 U.S.C. §§
3 304(d)(1), (c)(4)(A), and requires that the termination notice be “served not less
4 than two or more than ten years” before the effective date of termination. 17
5 U.S.C. §§ 304(c)(4)(A). Plaintiffs’ Termination Notice stated the effective date
6 of termination, November 17, 2004, which fell within the appropriate time-
7 frame from the date the copyright was originally secured (November 23, 1944
8 under copyright registration no. B653651); service of the Termination Notice
9 took place on November 8, 2002 by First Class Mail, postage pre-paid (per 37
10 C.F.R. § 201.10(d)) and in addition by certified mail return receipt requested,
11 which service date is “not less than two or more than ten years” before the
12 November 17, 2004 Termination Date. 17 U.S.C. §§ 304(c)(4)(A).

13 • Section 304(c) requires that a copy of the termination notice be “recorded
14 in the Copyright Office before the effective date of termination,” 17 U.S.C. §
15 304(c)(4)(A), and that it comply “in form, content, and manner of service, with
16 requirements that the Register of Copyrights shall prescribe by regulation,” 17
17 U.S.C. § 304(c)(4)(B). Plaintiffs’ Termination Notice was recorded in the
18 Copyright Office on November 20, 2002, well before the November 17, 2004
19 Termination Date (*see* Toberoff Decl., Exh. H); and the notice fully complied
20 with 37 C.F.R. § 201.10, the regulations issued by the Register of Copyrights
21 under Section 304(c).

22 Because Plaintiffs met all of the statutory requirements of Section 304(c),
23 their Termination should be deemed effective. On November 17, 2004, the
24 noticed Termination Date, Plaintiffs recaptured Siegel’s original copyright in
25 “Superboy.” While Defendants may continue to exploit works derived from
26 “Superboy” created prior to November 17, 2004, Plaintiffs’ production and
27 exploitation of “Superboy” derivative works on or after November 17, 2004 is
28 expressly prohibited by 17 U.S.C. § 304(c)(6)(A).

2. **The Termination Notice Was Not Required To List The 1948 Consent Judgment**

The regulations promulgated under 17 U.S.C. §304(c) by the Register of Copyrights require “a brief statement reasonably identifying the grant to which the notice of termination applies.” 37 C.F.R. §201.10 (b)(1)(iv). In compliance, the Termination Notice explicitly identifies the 1948 Stipulation dated May 19, 1948 wherein Siegel received compensation for granting “Superboy” to Defendants’ alleged predecessors. Termination Notice, ¶ 3, p. 52, Toberoff Decl., Exh. G. The Termination Notice also identified the 1975 Agreement regarding “Superman,” to the extent relevant.

Defendants nonetheless asserted in their Answer that Plaintiffs’ Termination is purportedly defective for not also listing the consent judgment dated May 21, 1948 (“1948 Consent Judgment”). See Counterclaim, ¶¶ 66-68. Firstly, the 1948 Consent Judgment is a judgment, not a “grant” of copyright. 37 C.F.R. §201.10 (b)(1)(iv). Secondly, the 1948 Consent Judgment dated May 21, 1948 merely follows the parties’ 1948 Stipulation entered into two days earlier on May 19, 1948. The 1948 Stipulation constitutes the operative grant underlying the 1948 Consent Judgment and, as such, is explicitly identified in the Termination Notice. Thirdly, since the prior 1948 Stipulation constituted the operative grant of “Superboy” to National, the subsequent 1948 Consent Judgment did not as a matter of law convey that which was previously granted on May 19, 1948, and already in National’s possession on May 21, 1948.

Finally, the 1948 Consent Judgment has no adverse impact on Plaintiffs’ Termination as “[t]ermination...may be effected notwithstanding any agreement to the contrary” 17 U.S.C. § 304(c)(5) and assignments of the reversionary termination interest cannot be made until “after the notice of termination has been served” (i.e., November 8, 2002). 17 U.S.C. § 304(c)(6)(B),(D).

As stated, the 1948 Consent Judgment merely adjudges what was

1 previously granted to National two days earlier in the 1948 Stipulation identified
2 in Plaintiffs' Termination Notice. In the unlikely event the Court even views
3 1948 Consent Judgment as a grant, the identification of the underlying 1948
4 Stipulation "reasonably identifies" the parallel consent judgment issued pursuant
5 to the 1948 Stipulation. 37 C.F.R. §201.10 (b)(1)(iv).

6 There is little case law on notice of termination formalities. In *Burroughs*
7 *v. MGM*, the court found that a Section 304(c) termination notice identifying a
8 1923 grant and 35 titles, applied to only the titles listed, but was not rendered
9 ineffective by the fact that many of the titles were assigned in subsequent grants
10 by the author *not* identified in the termination notice. 683 F.2d 610, 614, 618,
11 622 (2d. Cir. 1982) ("As further Tarzan books were written, the rights in these
12 were also transferred to the corporation"). In *Music Sales Corp. v. Morris*, a
13 "generic statement [in a Section 304(c) termination notice which] would not
14 seem to reasonably identify the grant" was nonetheless held adequate. 73 F.
15 Supp. 2d 364, 378 (SDNY 1999) (upheld termination notice that simply
16 identified grant as "grant or transfer of copyright and the rights of copyright
17 proprietor, including publication and recording right only").

18 Defendants received more than ample notice within the statutory time
19 frame of Plaintiffs' intention to terminate prior grants of "Superboy" and were in
20 no way prejudiced by Plaintiffs' not listing the 1948 Consent Judgment in
21 addition to the 1948 Stipulation. The regulations of the Register of Copyright,
22 on which Defendants purport to rely, specifically dissuade such hyper-technical
23 attempts to invalidate termination notices: "Harmless errors in a notice that do
24 not materially affect the adequacy of the information required to serve the
25 purposes of ...section 304(c) of title 17, U.S.C....shall not render the notice
26 invalid." 37 CFR § 201.10(e)(1).

27 **E. Plaintiffs' Own A Valid Statutory Copyright In "Superboy"**

28 **1. Copyright Secured By Registration Of The Collective**

Periodical That Published The Siegel Superboy Material

As stated, the Siegel Superboy Material secured a statutory copyright on November 23, 1944 upon registration with the Copyright Office of the serialized magazine, More Fun Comics, No. 101 (registration no. B653651) in which the Siegel Superboy Material was published in December of 1944. 1948 FOF, Fact 164-165; Toberoff Decl., Exh. F. The statutory copyright in this collective periodical (More Fun Comics, No. 101) secures the statutory copyright in its component part -- the Siegel Superboy Material. *See Self-Realization Fellowship Church v. Ananda Church*, 206 F.3d 1322, 1329 (9th Cir. 2000) (a blanket copyright on a periodical protects its constituent parts); *Morse v. Fields*, 127 F. Supp. 63, 64-65 (SDNY 1954) (publication in a collective work will secure a copyright in all component parts); *see also* 2-7 Nimmer on Copyright § 7.12 ("The rule with respect to collective works under the 1909 Act...provided that a single notice in the name of the copyright owner of the collective work was sufficient to protect each contribution contained therein.").

It is indisputable that the Siegel Superboy Material was published in More Fun Comics No. 101 in December of 1944. In the 1947 Action, Judge Young found that Detective's "comic strip release entitled SUPERBOY published [in More Fun Comics, No. 101] in December of 1944 embodied and was based upon the idea, plan and conception contained in the [Siegel Superboy Story] submitted by...SIEGEL to DETECTIVE COMICS, INC. in December of 1940," 1948 FOF, Fact 165, and "embodied and was based upon the idea, plan and conception contained in the [Siegel Superboy Synopsis] dated November 30, 1938. 1948 FOF, Fact 164.

Such findings of fact in the 1947 Action, to which no appeal was taken, are binding on Defendants as successors to the defendants in the 1947 Action under the doctrines of *res judicata* or *collateral estoppel*. Defendants may nonetheless try to side-step the preclusive effect of the 1947 Action by arguing

1 that it was not a copyright case. However, this is largely irrelevant because the
2 binding 1947 findings are not conclusions of copyright law, but are underlying
3 *factual* findings, i.e. that the "Superboy" comic strip, published in More Fun
4 Comics, No. 101, "embodied and was based upon" the Siegel Superboy
5 Material. 1948 FOF, Facts 164-165.

6 Moreover, in *Siegel, supra*, a federal copyright action, the Second Circuit
7 ruled that Judge Young's findings of fact and conclusions of law are preclusive
8 under *res judicata* and specifically relied on such in holding that Siegel had
9 conveyed the "Superman" renewal copyright to National. 509 F.2d at 912-913.

10 The lower court in *Siegel*, 364 F. Supp. at 1035, *aff'd* 509 F.2d at 913 also
11 explicitly held that Judge Young's findings in the 1947 state action were binding
12 on Defendants' predecessors in the subsequent copyright action, *citing Vernitron*
13 *Corp. v. Benjamin*, 440 F.2d at 108 ("There can be no question but that the
14 doctrine of collateral estoppel would be applied in any instance where the state
15 court had determined a factual issue arising in a subsequent federal litigation").

16 2. Siegel Had The Legal Right To Create Superboy

17 Defendants will next predictably argue that Siegel's "Superboy" is not
18 entitled to the benefits of copyright protection by claiming that Siegel was not
19 authorized to create "Superboy." This is incorrect, belied by both the evidence
20 and Judge Young's findings in the 1947 Action.

21 The September 22, 1938 Agreement between Siegel and Shuster and
22 Defendants' predecessor, National, permitted Siegel to create new comic book
23 features, subject to National's right of first refusal to accept or reject same
24 within six weeks of the submission thereof as follows:

25 "In the event you shall do or make any other artwork or continuity
26 suitable for us as comics or comic strips you shall first give us the right to
27 first refusal thereof by submitting said copy and continuity ideas to us.
28 We shall have the right to exercise that option for six weeks after sub-
mission to us at a price no greater than offered to you by any other party."

1938 Agreement, p.1, Toberoff, Exh. E

1 Thus, Judge Young specifically found in the 1947 Action:

2 “On or about November 30, 1938, the plaintiff SIEGEL, in writing and by
3 mail submitted to DETECTIVE COMICS, INC. for its consideration and
4 acceptance or rejection, for publication, under the terms of the contract
5 dated September 22, 1938 ... synopsis or summary [Siegel Superboy
6 Synopsis] of the idea and conception and plan of a new comic strip to be
7 known as SUPERBOY...”
8 1948 FOF, Fact 156.

9 “DETECTIVE COMICS, INC. on or about December 2, 1938, by its letter
10 in writing to the plaintiff SIEGEL did not elect to publish the said comic
11 strip SUPERBOY under the terms of the contract dated September 22,
12 1938.” 1948 FOF, Fact 157.

13 “During the month of December, 1940 the plaintiff SIEGEL submitted to
14 DETECTIVE COMICS, INC. for its further consideration a complete
15 script [Siegel Superboy Story]...for the first ‘release’ or ‘releases’ of the
16 proposed new comic strip SUPERBOY...” 1948 FOF, Fact 160.

17 “DETECTIVE COMICS, INC. did not within six weeks after submission
18 of the said script or scenario indicate its election to publish the said comic
19 strip SUPERBOY.” 1948 FOF, Fact 162.

20 Moreover, as Judge Young found in the 1947 Action, Detective ultimately
21 published the Siegel Superboy Material in December of 1944 in More Fun
22 Comics No. 101 (1948 FOF, Facts 164-165) and implicit in Detective’s
23 publication, acceptance and ratification of this material is Detective’s
24 authorization of its creation by Siegel. In addition, Siegel had submitted to
25 Detective his Superboy Synopsis in 1938 and his Superboy Story in 1940
26 without objection. For instance, when Siegel submitted his “Superboy” synopsis
27 “[o]n December 2, 1938, DETECTIVE COMICS, INC. deferred consideration
28 of a SUPERBOY comic strip until some future time.” 1948 FOF, Fact 157.

Moreover, nonexclusive authorization need not be in writing and may be
granted orally or implied by conduct. *Foad Consulting Group, Inc. v. Musil*
Govan Azzalino, 270 F.3d 821, 825, 831-832 (9th Cir. 2001) (“The Copyright
Act permits copyright holders to grant non-exclusive copyright licenses by
implication.”); *JBj Fabrics, Inc. v. Brylane, Inc.*, 714 F. Supp. 107, 110
(S.D.N.Y. 1989) (“informal authorization” sustains author’s copyright in
derivative work); 3-10 Nimmer on Copyright § 10.03 (“nonexclusive licenses

1 may be granted orally, or may even be implied from conduct.”).

2 Finally, Defendants are equitably estopped from arguing that Siegel’s
3 creation of “Superboy” was unauthorized after their predecessors’ published it;
4 and both their predecessors and they have willingly benefited from the Siegel
5 Superboy Material for decades. (1947 FOF, Facts 164-165).

6 **3. The Siegel Superboy Material Were Not Works-For-Hire**

7 The termination provisions of Section 304(c) do not apply to a “work
8 made for hire.” 17 U.S.C. § 304(c). Defendants will thus also try to argue that
9 the Siegel Superboy Synopsis and the Siegel Superboy Story were owned by
10 Defendants’ predecessor, Detective, as “works made for hire” under the now
11 repealed 1909 Copyright Act. See 17 U.S.C. § 26 (states the word “author” shall
12 include an employer in the case of works made for hire). This also flies in the
13 face of the findings of fact in the 1947 Action which resulted in the conclusion
14 of law that Siegel originally owned “Superboy” which binds Defendants under
15 the doctrines of *res judicata* or *collateral estoppel*.

16 As set forth above, Judge Young found in the 1947 Action that even
17 though Siegel and Shuster were to produce five specific comic books under the
18 September 22, 1938 Agreement, the Siegel Superboy Material fell under the
19 category of new comic strip ideas and material for which Detective held only a
20 right of first refusal for six weeks after its submission; and that Detective
21 ultimately declined to exercise such right. 1948 FOF, Facts 156-157; September
22 22, 1938 Agreement, p.1, Toberoff Decl., Exh. E.

23 Judge Young concluded:

24 “Plaintiff Siegel is the originator and sole owner of the comic strip
25 feature SUPERBOY, and the defendants [National *et al.*]...are
26 perpetually enjoined and restrained from creating, publishing,
27 selling or distributing any comic strip material of the nature now
28 and heretofore sold under the title SUPERBOY...” 1948 COL, No.
25; and

“Plaintiff Siegel, as the originator and sole owner of the comic strip
feature SUPERBOY has the sole and exclusive right to create, sell

1 and distribute comic strip material under the title SUPERBOY of
2 the type and nature heretofore published..." 1948 COL. No. 25

3 As set forth above, such findings of fact and conclusions of law bind
4 Defendants under the doctrines of *res judicata* or *collateral estoppel* and are in
5 opposition to Defendants' assertion that the Siegel Superboy Material was
6 owned by Detective / National as "works made for hire" within the scope of
7 Siegel's alleged employment. Issue preclusion includes not only issues that
8 were clearly litigated but also, by implication, a connected issue. "In other words
9 when the issue for which preclusion is sought is the only rational one that the
10 fact finder could have found, then that issue is considered foreclosed by
11 implication, even if no explicit finding of that issue has been made." 3-30
12 *Moore's Federal Practice and Procedure* § 30.73, see *Ashe v. Swenson*, 397
13 U.S. 436, 444, 25 L.Ed. 2d 469, 90 S.Ct. 1189 (1970).

14 Matters of contract interpretation relating to copyright typically fall within
15 state court jurisdiction. 3-12 *Nimmer on Copyright* § 12.01. See *T.B. Harms*
16 *Co. v. Eliscu*, 339 F.2d 823, 826 (2d Cir. 1964) (The federal grant of ...a
17 copyright has not been thought to infuse with any national interest a dispute as to
18 ownership...turning on the facts or on ordinary principles of contract law.").
19 See *Jasper v. Bovina Music, Inc.*, 314 F.3d 42, 46 (2d Cir. 2002) ("if the case
20 concerns a dispute as to ownership of a copyright, and the issue of ownership
21 turns on the interpretation of a contract, the case presents only a state
22 law issue"); *Knickerbocker Toy Co. v. Faultless Starch Co.*, 467 F.2d 501,
23 (C.C.P.A. 1972) ("Although 28 USC 1338(a) provides that the federal district
24 courts' original jurisdiction over copyright actions "shall be exclusive of the
25 courts of the states," the state courts clearly may pass on the validity of a
26 copyright if it is necessary to do so in the course of deciding a case over which
27 they do have jurisdiction.").

28 Thus, in *Siegel, supra* the Second Circuit found that National owned the
renewal copyright to "Superman" based on Judge Young's first conclusion of

1 law that “[b]y virtue of the instrument of March 1, 1938...DETECTIVE
2 COMICS, INC. became the absolute owner of the comic strip SUPERMAN...”
3 even though the 1947 state action did not mention or concern such renewal
4 copyright. 503 F.2d at 912; 1948 COL, No. 1. In response to Siegel’s and
5 Shuster’s arguments that a general transfer of copyright does not convey the
6 renewal copyright, the Second Circuit held “the state court action determined
7 that the agreements conveyed *all* of the plaintiffs’ rights in Superman to the
8 defendants...Under the doctrine of *res judicata* we are not free collaterally to re-
9 examine the agreements to determine whether the construction placed on them
10 was warranted.” 503 F.2d at 913. “The state court was called upon to construe
11 these instruments...that decision is binding on us here.” *Id.*

12 Likewise, Defendants are bound by the finding in the 1947 Action that
13 Detective held merely (and failed to exercise) a contractual right of first refusal
14 with respect to the Siegel Superboy Material; and that Siegel, not Defendants’
15 predecessors, therefore owned all rights in “Superboy.” Defendants cannot now
16 claim that Detective owned “Superboy” as a “work made for hire” or otherwise,
17 no more than Siegel and Shuster were permitted to argue in federal court that
18 they owned the renewal copyright to “Superman.” *Id.*

19 After immensely benefiting for fifty-eight years from the findings and
20 conclusions in the 1947 Action and from the federal decision in *Siegel, supra*
21 regarding “Superman,” Defendants now assume positions and arguments
22 completely contrary to both these decisions regarding “Superboy.” In addition
23 to the preclusive effect of *res judicata* and collateral estoppel, Defendants are
24 equitably estopped and/or judicially estopped from doing so.

25 Moreover, even if, contrary to these overriding principles, the Court were
26 to re-open the issue of whether Siegel owned “Superboy,” the underlying
27 findings of *fact* in the 1947 Action as to the parties’ contractual relationship and
28 Siegel’s wholly independent creation of “Superboy” inevitably also preclude

1 that "Superboy" was a "work made for hire" under the 1909 Copyright Act.

2 Throughout much of the life of the 1909 Act, until the mid-1960's, federal
3 courts applied the work-for-hire doctrine only to traditional hierarchical
4 employment relationships. *Twentieth Century Fox Film Corp. v. Entertainment*
5 *Distrib.*, 429 F.3d 869, 877 (9th Cir. 2005) citing *Playboy Enters., Inc. v.*
6 *Dumas*, 53 F.3d 549,554 (2d Cir. 1995) "In the last decade that the [1909] Act
7 was effective the Courts expanded the doctrine to include less traditional
8 relationships so long as the hiring party had " 'the right to control the artist's
9 work.' " *Twentieth Century*, 429 F.3d at 877, quoting *Self-Realization*
10 *Fellowship Church v. Ananda Church*, 206 F.3d 1322, 1331 (9th Cir. 2000).

11 The Ninth Circuit has "consistently evaluated claims that a work was
12 made for hire by asking whether it was created at the "instance and expense" of
13 the engaging party. *Id.* at 877, citing and quoting *Dolman v. Agee*, 157 F.3d 708,
14 711-712 (9th Cir. 1998) (a party asserting work for hire defense is "required to
15 present some credible evidence that [the author's] work was done at the
16 'instance and expense' of the commissioning party.").

17 Judge Young found that Siegel independently created his original
18 Superboy Synopsis and Superboy Story under the terms of the September 22,
19 1938 Agreement, which permitted him to originate new comic strip concepts and
20 stories outside the five comic strips Siegel and Shuster were currently producing,
21 subject to a right on the part of Detective to accept or reject same with six weeks
22 of their submission. 1948 FOF, Facts 156-159, 160-162.

23 This first refusal procedure and time limit on Detective's right to purchase
24 and publish the Siegel Superboy Material from a factual perspective runs
25 counter to any notion or intent that Detective owned such material at inception
26 as the "author" of a "work made for hire. See 17 U.S.C. § 26 (repealed). See
27 *Lin-Brook Blders Hrdwre v. Gertler*, 352 F.2d 298, 300 (9th Cir. 1965) (work for
28 hire status turns on "mutual intent of the parties [] that the title of the copyright

1 shall be in the person at whose instance and expense the work was done”).

2 Judge Young found that Siegel's Superboy Synopsis created by Siegel on
3 November 30, 1938 contained the “conception and plan of a new comic strip to
4 be known as SUPERBOY,” 1948 FOF, Fact 156, and that Siegel's Superboy
5 Story created by Siegel in December of 1940, contained:

6 “the continuity, plan and dialogue for the first ‘release’ or ‘releases’ of the
7 proposed new comic strip SUPERBOY and...contained within itself the
8 entire plan for the future publication of the said comic strip SUPERBOY
and the concept and character SUPERBOY, all set forth with detail and
particularity.”

9 1948 FOF, Fact 160. Judge Young further found that Detective did not elect to
10 purchase and publish such material within the six weeks allotted to them in the
11 September 22, 1938 Agreement. From this factual scenario, it is impossible to
12 conclude that the Siegel Superboy Material was created by Siegel “at the
13 instance and expense” of Detective. Judge Young found that Siegel owned his
14 original Superboy material because Detective failed to exercise its right of first
15 refusal to pay for the Siegel Superboy Material. 1948 FOF, Facts 158, 162, 173;
16 1948 COL, Nos. 25-26. Again, these findings of fact are binding on Defendants
17 and preclude the conclusion that the Siegel Superboy Material was work-for-hire
18 even under the 1909 Act's “instance and expense” test.

19 IV. CONCLUSION

20 For the foregoing reasons, Plaintiffs respectfully requests that the Court
21 grant their motion for partial summary adjudication in the form lodged
22 separately herewith as the Proposed Judgment.

23 DATED: February 15 , 2006 LAW OFFICES OF MARC TOBEROFF, PLC

24 By 
25 Marc Toberoff

26
27 Attorneys for Plaintiffs JOANNE SIEGEL
28 and LAURA SIEGEL LARSON

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Attorneys for Plaintiffs and Counterclaim Defendants
JOANNE SIEGEL and LAURA SIEGEL LARSON

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Plaintiffs,

vs.

TIME WARNER INC., a corporation;
WARNER COMMUNICATIONS
INC., a corporation; WARNER
BROS. ENTERTAINMENT INC., a
corporation; WARNER BROS.
TELEVISION PRODUCTION INC.,
a corporation; DC COMICS, a general
partnership; and DOES 1-10,

Defendants.

DC COMICS,

Counterclaimant,

vs.

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Counterclaim Defendants.

Case No. CV 04-08776 RSWL (RZx)

[Honorable Ronald S. W. Lew]

**[PROPOSED] JUDGMENT
FOLLOWING PARTIAL
SUMMARY JUDGMENT**

[Complaint filed: October 22, 2004]

Date: March 20, 2006

Time: 9:00 a.m.

Place: Courtroom 21, 5th Floor

[Notice of Motion; Memorandum of
Points and Authorities In Support of
Motion For Partial Summary
Judgment; Statement of
Uncontroverted Facts and
Conclusions Of Law; Declaration Of
Marc Toberoff; Request For Judicial
Notice Filed Concurrently Herewith]

1 The Motion of plaintiffs Joanne Siegel and Laura Siegel Larson ("Plaintiffs")
2 for Partial Summary Judgment on Plaintiffs' First Amended Complaint and the
3 First Amended Counterclaim of defendants and counterclaimants Time Warner
4 Inc., Warner Communications Inc., Warner Bros. Entertainment Inc., Warner Bros.
5 Television Production Inc. and DC Comics ("Defendants") came on regularly for
6 hearing on March 20, 2006 in Courtroom 21 of the above-entitled Court, the
7 Honorable Ronald S. W. Lew presiding. Appearances were reflected in the record.

8 The Court, having considered the papers submitted in support of and in
9 opposition to the Motion, the pleadings and files in this action, and the arguments
10 of counsel, having considered all admissible, relevant evidence and having
11 disregarded any inadmissible and/or irrelevant evidence and having made a
12 determination of Uncontroverted Facts and Conclusions of Law in connection
13 therewith, and good cause appearing therefore,

14 IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for
15 Partial Summary Judgment is granted in its entirety. There is no triable issue of
16 material fact as to whether Plaintiffs' Notice of Termination ("Termination")
17 pursuant to the Section 304(c) of the Copyright Act of 1976, 17 U.S.C. § 304(c), is
18 valid and effective. The undisputed facts demonstrate that the Termination
19 properly terminated Jerome Siegel's ("Siegel") May 19, 1948 grant and December
20 23, 1975 grant, if any, of Siegel's copyright in "Superboy" to Defendants' alleged
21 predecessors and that on the noticed March 20, 1998 Termination date Plaintiffs
22 recaptured Siegel's copyright in "Superboy" pursuant to 17 U.S.C. § 304(c).
23 Defendants are therefore ordered to account to Plaintiffs with respect to all profits
24 derived by Defendants, or any of them, from the exploitation of "Superboy" on or
25 after the November 17, 2004 Termination date and Defendants are enjoined from
26 exploiting any new derivative works derived in whole or in part from "Superboy"

27 //


28 //

1 created on or after November 17, 2004 without due authorization from the
2 Plaintiffs.
3
4

5 DATED: _____

Hon. Ronald S. W. Lew
U.S. District Judge

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9 Respectfully submitted,
10 Law Offices of Marc Toberoff, PLC

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12 By: 
13 Marc Toberoff
14 Attorneys for Plaintiffs Joanne Siegel
15 and Laura Siegel Larson
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JOANNE SIEGEL and LAURA SIEGEL LARSON

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Plaintiffs,

vs.

TIME WARNER INC., a corporation;
WARNER COMMUNICATIONS
INC., a corporation; WARNER
BROS. ENTERTAINMENT INC., a
corporation; WARNER BROS.
TELEVISION PRODUCTION INC.,
a corporation; DC COMICS, a general
partnership; and DOES 1-10,

Defendants.

DC COMICS,

Counterclaimant,

vs.

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Counterclaim Defendants.

Case No. CV 04-08776 RSWL (RZx)

[Honorable Ronald S. W. Lew]

**PLAINTIFFS JOANNE SIEGEL
AND LAURA SIEGEL LARSON'S
REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

[Complaint filed: October 22, 2004]

Date: March 20, 2006

Time: 9:00 a.m.

Place: Courtroom 21, 5th Floor

[Notice of Motion; Memorandum of
Points and Authorities In Support of
Motion For Partial Summary
Judgment; Statement of
Uncontroverted Facts and
Conclusions Of Law; Declaration Of
Marc Toberoff and [Proposed]
Judgment Filed Concurrently
Herewith]

Pursuant to the Federal Rules of Evidence, Rule 201, Plaintiffs Joanne Siegel and Laura Siegel Larson ("Plaintiffs"), respectfully requests that this Honorable Court take judicial notice of the following law and facts:

Fed. R. Civ. Proc. Rule 201 states that:

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Judicial notice may be taken of court records. *Mullis v. U.S. Bankruptcy Court for Dist. Of Nevada*, 828 F.2d 1385, 1388 n. (9th Cir. 1987). Accordingly, a court may take judicial notice of the opinions, complaints, briefs, and evidence filed in other actions. *See Egan v. Teets*, 251 F.2d 571, 578 (9th Cir. 1957).


Accordingly, Plaintiffs respectfully requests that this Honorable Court take Judicial Notice of the documents set forth below from the civil action filed in 1947 by Jerome Siegel and Joseph Shuster against Defendant DC Comics' predecessor, National Comics Publications, Inc. *et al.* ("National") in the Supreme Court of the State of New York, County of Westchester in 1947 (the "1947 Action") to determine the validity of various "Superman" contracts between Siegel and Shuster and National's predecessors, and to determine the ownership of Siegel's creation, "Superboy," under such contracts. Pursuant to stipulation of the parties the 1947 Action was tried before an Official Referee of the New York Supreme Court, Judge Addison Young ("Judge Young"). *See Jerome Siegel and Joseph Shuster v. National Periodical Publications et al.*, 364 F. Supp. 1032, 1034-1035 (S.D.N.Y. 1973) *aff'd* 508 F.2d 909, 912-913 (2nd Cir. 1974).

1. Attached hereto and incorporated herein as Exhibit "A" is a true and correct certified copy of Judge Young's Opinion dated November 21, 1947

1 in the 1947 Action.

2 2. Attached hereto and incorporated herein as Exhibit "B" is a true and
3 correct certified copy of Judge Young's signed findings of fact and conclusions
4 of law dated April 12, 1948 in the 1947 Action.

5 DATED: February 15, 2006 LAW OFFICES OF MARC TOBEROFF, PLC

6
7 By: 
8 Marc Toberoff

9 Attorneys for Plaintiffs JOANNE SIEGEL
10 and LAURA SIEGEL LARSON
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2 Nicholas C. Williamson (CA State Bar No. 231124)
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8 Attorneys for Plaintiffs and Counterclaim Defendants
9 JOANNE SIEGEL and LAURA SIEGEL LARSON

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Plaintiffs,

vs.

TIME WARNER INC., a corporation;
WARNER COMMUNICATIONS
INC., a corporation; WARNER
BROS. ENTERTAINMENT INC., a
corporation; WARNER BROS.
TELEVISION PRODUCTION INC.,
a corporation; DC COMICS, a general
partnership; and DOES 1-10,

Defendants.

DC COMICS,

Counterclaimant,

vs.

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Counterclaim Defendants.

Case No. CV 04-08776 RSWL (RZx)

[Honorable Ronald S. W. Lew]

**DECLARATION OF MARC
TOBEROFF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

[Complaint filed: October 22, 2004]

Date: March 20, 2006

Time: 9:00 a.m.

Place: Courtroom 21, 5th Floor

[Notice of Motion; Memorandum of
Points and Authorities In Support of
Motion For Partial Summary
Judgment; Statement of
Uncontroverted Facts and
Conclusions Of Law; Request For
Judicial Notice and [Proposed]
Judgment Filed Concurrently
Herewith]

1 **DECLARATION OF MARC TOBEROFF**

2 I, Marc Toberoff, declare as follows:

3 1. I am an attorney at the Law Offices of Marc Toberoff, PLC,
4 counsel of record for plaintiffs Laura Siegel Larson and Joanne Siegel
5 ("Plaintiffs"). I am a member in good standing of the State Bar of California
6 and submit this Declaration in support of Plaintiff's Motion for Partial Summary
7 Judgment. I have personal knowledge of the facts set forth in this Declaration
8 and, if called as a witness, could and would testify competently to such facts
9 under oath.

10 2. A true and correct certified copy of the Opinion, dated November
11 21, 1947, of the Official Referee Judge Addison Young (hereinafter, "Judge
12 Young") in the action entitled *Jerome Siegel and Joseph Shuster v. National*
13 *Periodical Publications, et al.* in the Supreme Court of the State of New York,
14 Westchester County (hereinafter, the "1947 Action") is attached hereto as
15 Exhibit "A."

16 3. A true and correct certified copy of Judge Young's Findings of Fact
17 and Conclusions of Law dated April 12, 1948, in the 1947 Action, is attached
18 hereto as Exhibit "B."

19 4. A true and correct copy of the Stipulation of settlement dated May
20 19, 1948 between the parties to the 1947 Action (Jerome Siegel, Joseph Shuster
21 and National Periodical Publications, *et al.*) which I had copied from the Joint
22 Appendix in *Siegel v. National Periodical Publications, Inc. et al.*, 508 F.2d 909
23 (2d Cir. 1974) is attached hereto as Exhibit "C."

24 5. A true and correct certified copy of Judge Young's corresponding
25 Final [Consent] Judgment dated May 21, 1948 in the 1947 Action is attached
26 hereto as Exhibit "D."

27 6. A true and correct copy of the agreement dated September 22, 1938
28 between Jerome Siegel and Joseph Shuster on the one hand and Detective

1 Comics, Inc. on the other hand, which was provided to me by Plaintiffs, is
2 attached hereto as Exhibit "E."

3 7. A true and correct copy of an excerpt from the United States
4 Copyright Office Catalogue of Copyright Entries listing the copyright
5 registration (no. B653651) of More Fun Comics, No. 101 on November 18, 1944
6 and its renewal registration (no. R532582) on July 17, 1972, which I caused to
7 be researched and copied at the Los Angeles Public Library, Central Branch, is
8 attached hereto as Exhibit "F."

9 8. A true and correct copy of Plaintiffs' Notice of Termination of
10 Transfer Covering Extended Renewal Term of "Superboy" dated November 8,
11 2002 ("Termination Notice") is attached hereto as Exhibit "G."

12 9. A true and correct copy of the electronic record of the recordation
13 at the United States Copyright Office on November 20, 2002 of Plaintiffs'
14 Termination Notice which I caused to be researched on line and copied is
15 attached hereto as Exhibit "H."

16 10. For the Court's convenience, a true and correct copy of the decision
17 in *Siegel v. National Periodical Publications, Inc. et al.*, 364 F. Supp. 1032
18 (S.D.N.Y. 1973) is attached hereto as Exhibit "I."

19 11. For the Court's convenience, a true and correct copy of the decision
20 in *Siegel v. National Periodical Publications, Inc. et al.*, 508 F.2d 909 (2d Cir.
21 1974) is attached hereto as Exhibit "J."

22 Executed on February 15, 2006 in Los Angeles, California.

23
24 

25 _____
26 Marc Toberoff
27
28

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Attorneys for Plaintiffs and Counterclaim Defendants
JOANNE SIEGEL AND LAURA SIEGEL LARSON

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Plaintiffs,

vs.

TIME WARNER INC., a corporation;
WARNER COMMUNICATIONS
INC., a corporation; WARNER
BROS. ENTERTAINMENT INC., a
corporation; WARNER BROS.
TELEVISION PRODUCTION INC.,
a corporation; DC COMICS, a general
partnership; and DOES 1-10,

Defendants.

DC COMICS,

Counterclaimant,

vs.

JOANNE SIEGEL, an individual; and
LAURA SIEGEL LARSON, an
individual,

Counterclaim Defendants.

Case No. CV 04-08776 RSWL (RZx)

[Honorable Ronald S. W. Lew]

**PLAINTIFFS JOANNE SIEGEL
AND LAURA SIEGEL LARSON'S
STATEMENT OF
UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW
IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Complaint filed: October 22, 2004

Date: March 20, 2006

Time: 9:00 a.m.

Place: Courtroom 21, 5th Floor

[Notice of Motion; Memorandum of
Points and Authorities In Support of
Motion For Partial Summary
Judgment; Declaration of Marc
Toberoff; Request For Judicial Notice
and [Proposed] Judgment Filed
Concurrently Herewith]

1 Plaintiffs Joanne Siegel and Laura Siegel Larson ("Plaintiffs")
2 respectfully submit this Statement of Uncontroverted Facts and Conclusions of
3 Law pursuant to Central District Local Rule 56-1 in support of Plaintiffs' motion
4 for partial summary judgment.

5
6 **STATEMENT OF UNCONTROVERTED FACTS**

7

<u>FACTS</u>	<u>EVIDENCE</u>
9 1. On September 22, 1938, Jerome 10 Siegel ("Siegel") and Joseph Shuster 11 ("Shuster") entered into an agreement 12 with Detective Comics, Inc. 13 ("Detective") (the "September 22, 14 1938 Agreement") to produce the 15 "artwork and continuity" for five 16 existing comic strips, including 17 "Superman."	1. Judge Addison Young's Findings of Fact ("1948 FOF") and Conclusions of Law ("1948 COL") dated April 12, 1948, Facts 39, 46, attached as Exhibit "B" to the Declaration of Marc Toberoff ("Toberoff Decl."); Toberoff Decl. Exh. "E" [Copy of the September 22, 1938 Agreement].
19 2. In addition, the September 22, 20 1938 Agreement permitted Siegel and 21 Shuster to create new comic book 22 features, provided that National had a 23 right of first refusal to accept or reject 24 same within six weeks of the 25 submission thereof.	2. Toberoff Decl. Exh. "B" [1948 FOF, Facts 155-158]; Toberoff Decl. Exh. "E" [Copy of the September 22, 1938 Agreement].

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1 2 3	3. In or about 1938, Siegel conceived of a new comic strip series entitled "Superboy."	3. Toberoff Decl. Exh. "B" [1948 FOF, Fact 155].
4 5 6 7 8 9 10 11 12 13 14 15	4. On November 30, 1938 Siegel submitted to Detective for its acceptance or rejection under the terms of the September 22, 1938 Agreement, a written synopsis or summary of the character, conception and plan for his "Superboy" comic strip series (the "Superboy Synopsis"), which Siegel suggested could run in Detective's magazines, "More Fun Comics" or "New Adventure Comics."	4. Toberoff Decl. Exh. "B" [1948 FOF, Facts 155-156].
16 17 18 19 20 21	5. By letter to Siegel dated December 2, 1938, Detective did not elect to purchase Siegel's "Superboy" within six weeks from its submission per the terms of the September 22, 1938 Agreement.	5. Toberoff Decl. Exh. "B" [1948 FOF, Facts 157-159].
22 23 24 25 26 27	6. Thereafter, in December, 1940, Siegel authored a complete original "Superboy" story ("Superboy Story"; collectively referred to herein with the Superboy Synopsis, as the "Siegel Superboy Material").	6. Toberoff Decl. Exh. "B" [1948 FOF, Fact 160].

28

1	7. The Siegel Superboy Material	7. Toberoff Decl. Exh. "B"
2	contained in detail and with	[1948 COL, Nos. 25-26; 1948
3	particularity the unique conception	FOF, Facts 155-162].
4	and character of "Superboy," the	
5	continuity and dialogue for the first	
6	"release" or "releases" of	
7	"Superboy," and the plan for the	
8	future publication of a "Superboy"	
9	comic book series.	
10	8. On or about December of 1940,	8. Toberoff Decl. Exh. "B"
11	Mr. Siegel submitted his Superboy	[1948 FOF, Facts 160, 162].
12	Story to Detective for its further	
13	consideration; however, Detective did	
14	not elect to purchase the Superboy	
15	Story within six weeks of its	
16	submission per the September 22,	
17	1938 Agreement.	
18	9. In 1944 Jerome Siegel was	9. Toberoff Decl. Exh. "B"
19	stationed abroad on military service.	[1948 FOF, Fact 182].
20	10. While Siegel was stationed	10. Toberoff Decl. Exh. "B"
21	abroad, Detective, without notice to	[1948 FOF, Facts 163-168, 168].
22	Siegel, used and published the Siegel	
23	Superboy Material as an illustrated	
24	comic book story entitled "Superboy"	
25	in the body of the magazine issue,	
26	More Fun Comics, No. 101, which	
27	was published and issued for sale in	
28		

1	December, 1944.	
2	11. Thereafter, Detective released	11. Toberoff Decl. Exh. "B"
3	"Superboy" comic strips in	[1948 FOF, Fact 169].
4	magazines bi-monthly until February,	
5	1946 and monthly thereafter.	
6	12. Upon Siegel's return from the war	12. Toberoff Decl. Exh. "B"
7	in January of 1946, Detective entered	[1948 FOF, Facts 183-184].
8	into negotiations with Siegel to	
9	purchase the Siegel Superboy	
10	Material and to hire Siegel to write	
11	further "Superboy" comic strips.	
12	However, no agreement was reached.	
13	13. In or about 1947, Jerome Siegel	13. First Amended Supplemental
14	("Siegel") and Joseph Shuster	Complaint ("FASC") ¶ 33;
15	("Shuster"), filed an action in the	Answer to First Amended
16	Supreme Court of the State of New	Supplemental Complaint
17	York, County of Westchester (the	("AFASC") ¶ 33; First Amended
18	"1947 Action") against Defendant	Counterclaim ("FACC") ¶ 23.
19	DC Comics' predecessor, National	
20	Comics Publications, Inc.	
21	("National") to determine the validity	
22	of various "Superman" contracts	
23	between Siegel and Shuster and	
24	National's predecessors, including	
25	Detective and to determine the	
26	ownership of Siegel's creation	
27	"Superboy."	
28		

14. Pursuant to stipulation of the parties the 1947 Action was tried before an Official Referee of the New York Supreme Court, Judge Addison Young ("Judge Young").	14. FASC ¶ 33; AFASC ¶ 33; Toberoff Decl. Exhs. "A", "B" [Opinion of Official Referee Judge Addison Young; 1948 FOF and 1948 COL dated April 12, 1948]; Toberoff Decl. Exh. "J" [<i>Siegel v. National Periodical Publications, Inc.</i> , 508 F.2d 909, 912 (2 nd Cir. 1974)].
15. After trial of the 1947 Action, Judge Young rendered an opinion dated November 21, 1947 (the "1947 Opinion").	15. Toberoff Decl. Exh. "A" [Opinion of Official Referee Judge Addison Young]; FASC ¶ 33; FACC ¶ 24; Toberoff Decl. Exh. "J" [<i>Siegel v. National Periodical Publications, Inc.</i> , 508 F.2d 909, 912 (2 nd Cir. 1974)]; Request for Judicial Notice, Exh. "A" [Opinion of Judge Addison Young].
16. On April 12, 1948, Judge Young signed detailed findings of fact and conclusions of law and rendered an interlocutory judgment from which no appeal was perfected.	16. FAC ¶ 34; FACC ¶ 25; Toberoff Decl. Exh. "B" [1948 FOF and 1948 COL]; Toberoff Decl. Exh. "J" [<i>Siegel v. National Periodical Publications, Inc.</i> , 508 F.2d 909, 912 (2 nd Cir. 1974)]; Request for

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	Judicial Notice, Exh. "B" [1948 FOF and 1948 COL].
17. Siegel is the originator and the sole author of the comic strip feature "Superboy."	17. Toberoff Decl. Exh. "B" [1948 FOF, Fact 160; 1948 COL, Nos. 25-26].
18. Detective's first "comic strip release entitled SUPERBOY published in December of 1944 [in More Fun Comics, No. 101] embodied and was based upon the idea, plan and conception contained in the [Superboy Story] submitted by...SIEGEL to DETECTIVE COMICS, INC. in December of 1940," and "embodied and was based upon the idea, plan and conception contained in the [Siegel Superboy Synopsis] dated November 30, 1938."	18. Toberoff Decl. Exh. "B" [1948 FOF, Facts 164-165].
19. "[A]ll of the comic strip material published [by Detective] under the title SUPERBOY was based upon the idea, plan, conception and direction contained in the [Siegel Superboy Material]."	19. Toberoff Decl. Exh. "B" [1948 FOF, Facts 171-172].
20. "SUPERMAN...did not contain the plan, scheme, idea or conception of the comic strip SUPERBOY as it	20. Toberoff Decl. Exh. "B" [1948 FOF, Facts 166-167].

1 was later submitted by...SIEGEL to
2 DETECTIVE COMICS, INC. in [the
3 Siegel Superboy Material],” and “did
4 not contain the plan, scheme, idea or
5 conception of the comic strip
6 SUPERBOY as published by
7 DETECTIVE COMICS, INC. and by
8 NATIONAL COMICS
9 PUBLICATIONS, INC from
10 December, 1944 until [April, 1948].”

11 21. “Siegel is the originator and the
12 sole owner of the comic strip feature
13 SUPERBOY.”

21. Toberoff Decl. Exh. “B”
[1948 COL, No. 25].

14 22. “Siegel, as the originator and
15 owner of the comic strip feature ha[d]
16 the sole and exclusive right to create,
17 sell and distribute comic strip
18 material under the title SUPERBOY
19 of the type and nature [t]heretofore
20 published [by Detective and National
21 Comics Publications, Inc.
22 (“National”)].”

22. Toberoff Decl. Exh. “B”
[1948 COL, No. 26].

23 23. Based on his above findings of
24 fact and conclusions of law, Judge
25 Young concluded in the 1947 Action
26 that the defendants National *et al.* be
27 “perpetually enjoined and restrained

23. Toberoff Decl. Exh. “B”
[1948 COL, No. 25].

1 from creating, publishing selling or
 2 distributing any comic strip material
 3 of the nature now and heretofore sold
 4 under the title SUPERBOY, or any
 5 other comic strip material made in
 6 imitation of the conception,
 7 characters, nature, incidents, actions
 8 or plot of [Siegel's] comic strip
 9 SUPERBOY..."

10 24. Based on his above findings of
 11 fact and conclusions of law, Judge
 12 Young concluded in the 1947 Action
 13 that the defendants National *et al.*
 14 "account to... Siegel for all profits
 15 derived from the publication, sale and
 16 distribution of all comic strip material
 17 entitled SUPERBOY..."

18 25. The parties entered a stipulation
 19 of settlement dated May 19, 1948
 20 ("1948 Stipulation") settling the 1947
 21 Action wherein Siegel granted
 22 "Superboy" to National.

25 26. In 1969, Siegel and Shuster
 26 sought declaratory relief in the U.S.
 27 District Court for the Southern
 28

24. Toberoff Decl. Exh. "B"
 [1948 COL, No. 27].

25. FASC ¶ 33; AFASC ¶ 33;
 FACC ¶ 26; Toberoff Decl. Exh.
 "C" [1948 Stipulation]; Toberoff
 Decl. Exh. "J" [*Siegel v.*
National Periodical
Publications, Inc., 508 F.2d 909,
 912 (2nd Cir. 1974)].

26. FACC ¶ 27; Toberoff Decl.
 Exh. "T" [*Siegel v. National*
Periodical Publications, Inc. et

1 District of New York regarding	<i>al.</i> , 364 F. Supp. 1032 (S.D.N.Y.
2 ownership of the renewal copyright to	1973)].
3 "Superman," resulting in the decision,	
4 <i>Siegel v. National Periodical</i>	
5 <i>Publications, Inc. et al.</i> , 364 F. Supp.	
6 1032 (S.D.N.Y. 1973)	
7 27. This case was appealed to the	27. FASC ¶ 36; FACC ¶ 28;
8 U.S. Court of Appeals for the Second	Toberoff Decl. Exh. "J" [<i>Siegel</i>
9 Circuit resulting in the decision,	<i>v. National Periodical</i>
10 <i>Siegel v. National Periodical</i>	<i>Publications, Inc.</i> , 508 F.2d 909
11 <i>Publications, Inc.</i> , 508 F.2d 909 (2 nd	(2 nd Cir. 1974)].
12 Cir. 1974).	
13 28. On appeal, the Second Circuit	28. Toberoff Decl. Exh. "J"
14 Court of Appeals found that Judge	[<i>Siegel v. National Periodical</i>
15 Addison's opinion, findings of fact,	<i>Publications, Inc.</i> , 508 F.2d 909,
16 conclusions of law and resultant	912-913 (2 nd Cir. 1974)].
17 consent judgment after settlement of	
18 the 1947 Action were binding on the	
19 parties under the doctrine of <i>res</i>	
20 <i>judicata</i> .	
21	
22 29. On December 23, 1975, Siegel	29. FACC ¶ 29.
23 and Shuster entered into an agreement	
24 with Warner Communications Inc.	
25 (the "1975 Agreement"), the alleged	
26 parent company of National	
27 Periodical Publications, Inc. , which	
28	

provided for modest annual payments to Siegel and Shuster, certain medical benefits and credit to Siegel and Shuster as the "creators" of "Superman," in exchange for Siegel and Shuster's acknowledgement that Warner Communications, Inc. was the exclusive owner of "Superman."

30. On November 8, 2002, Plaintiffs availed themselves of their right under the U. S. Copyright Act (17 U.S.C. § 304 (c)) to recapture the "Superboy" copyright by serving notice on the Defendants that Plaintiffs were terminating the grant of "Superboy" in the 1948 Stipulation and to the extent relevant, the 1975 Agreement (the "Termination Notice"), to take effect November 17, 2004.

31. Plaintiff Joanne Siegel is the author Siegel's widow and she therefore owns 50% of Siegel's termination interest.

32. Plaintiff Laura Siegel Larson is one of Siegel's two children, and she

30. Toberoff Decl. Exh. "G" ["Superboy" Notice of Termination]; Toberoff Decl. Exh. "H" [Electronic Record of Recordation of "Superboy" Notice of Termination in U.S. Copyright Office]; FASC ¶ 48; FACC ¶ 57.

31. FASC ¶ 6; FACC ¶ 2; 17 U.S.C. §304(c)(2)(A); Toberoff Decl. Exh. "G" ["Superboy" Notice of Termination].

32. FASC ¶ 7; FACC ¶ 3; 17 U.S.C. §304(c)(2)(A); Toberoff

1	therefore owns 25% of Siegel's	Decl. Exh. "G" ["Superboy"
2	termination interest.	Notice of Termination].
3	33. The serialized magazine issue,	33. Toberoff Decl. Exh. "B"
4	"More Fun Comics 101" used,	[1948 FOF, Fact 164, 165].
5	embodied and published the Siegel	
6	Superboy Material.	
7		
8	34. Copyright in the serialized	34. Toberoff Decl. Exh. "F"
9	magazine, More Fun Comics, No.	[Record of Original and Renewal
10	101, was secured on November 23,	Registration for "More Fun
11	1944 with the Register of Copyrights	Comics 101"]; Toberoff Decl.
12	under copyright registration number	Exh. "G" ["Superboy" Notice of
13	B653651 in the name of Detective	Termination].
14	and renewed on July 17, 1972 in the	
15	name of National, claiming as	
16	proprietor of copyright, under	
17	copyright renewal registration	
18	number R532582.	
19	35. Section 304(c) of the Copyright	35. 17 U.S.C. § 304(c); Toberoff
20	Act of 1976 ("Section 304(c)")	Decl. Exh. "F" [Record of
21	applies to "any copyright ...	Original and Renewal
22	subsisting in its renewal term on the	Registration for "More Fun
23	effective date of the [1976 Act]."	Comics 101"]; Toberoff Decl.
24	Copyright in "Superboy" subsisted in	Exh. "G" ["Superboy" Notice of
25	its renewal term on the effective date	Termination]; Toberoff Decl.
26	of the 1976 Act, January 1, 1978.	Exh. "H" [Electronic Record of
27		Recordation of "Superboy"
28		

	Termination Notice in U.S. Copyright Office].
36. Section 304(c) applies only to transfers or licenses "executed before January 1, 1978," by the author, the author's surviving spouse and children (or certain other designated persons). The grants terminated by Plaintiffs were the 1948 Stipulation and the 1975 Agreement (to the extent relevant), both pre-1978 documents.	36. 17 U.S.C. § 304(c); Toberoff Decl. Exh. "G" ["Superboy" Notice of Termination]; Toberoff Decl. Exh. "H" [Electronic Record of Recordation of "Superboy" Termination Notice in U.S. Copyright Office]; FASC ¶ 50; FACC ¶ 57.
37. Section 304(c) requires the termination notice to "state the effective date of termination, which shall fall within the five-year period" "beginning at the end of 56 years from the date copyright was originally secured," and requires that the termination notice be "served not less than two or more than ten years" before the effective date of termination. Plaintiffs' Termination Notice stated the effective date of termination, November 17, 2004, which fell within the appropriate time-frame from the date the	37. 17 U.S.C. §§ 304(c)(4)(A), (d)(1); Toberoff Decl. Exh. F. [Record of Original and Renewal Registration for "More Fun Comics 101"]; Toberoff Decl. Exh. "G" ["Superboy" Notice of Termination]; Toberoff Decl. Exh. "H" [Electronic Record of Recordation of "Superboy" Termination Notice in U.S. Copyright Office].

Feb-15-06

05:40pm From-

T-592 P-0567060 F-534

1 copyright was originally secured
2 (November 23, 1944 under copyright
3 registration no. B653651); service of
4 the Termination Notice took place on
5 November 8, 2002 by First Class
6 Mail, postage pre-paid and in addition
7 by certified mail return receipt
8 requested, which service date is "not
9 less than two or more than ten years"
10 before the November 17, 2004
11 Termination Date.

12 38. Section 304(c) requires that a
13 copy of the termination notice be
14 "recorded in the Copyright Office
15 before the effective date of
16 termination," and that it comply "in
17 form, content, and manner of service,
18 with requirements that the Register of
19 Copyrights shall prescribe by
20 regulation." Plaintiffs recorded their
21 Termination Notice in the Copyright
22 Office on November 20, 2002, well
23 before the November 17, 2004
24 Termination Date; and the notice
25 fully complied with 37 C.F.R. §
26 201.10, the regulations issued by the
27 Register of Copyrights under Section

38. 17 U.S.C. § 304(c)(4)(A),
(c)(4)(B); Toberoff Decl. Exh.
"G" ["Superboy" Notice of
Termination]; Toberoff Decl.
Exh. "H" [Electronic Record of
Recordation of "Superboy"
Termination Notice in U.S.
Copyright Office].

304(c).

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter pursuant to 17 U.S.C. § 101 *et al.* and 28 U.S.C. §§ 1331 and 1338(a).

2. Judge Young's findings of fact and conclusions of law in the 1947 Action regarding Siegel's creation and ownership of "Superboy" and the relationship between Siegel and Defendants' predecessors are binding on Defendants under the doctrines of *res judicata* or collateral estoppel and are dispositive of Plaintiffs' motion for summary judgment. The preclusive effect, in a federal copyright action, of the findings of fact and conclusions of law in the 1947 state court action was confirmed in *Siegel v. National Periodical Publications, et al.* 508 F.2d 909, 912-913 (2nd Cir. 1974). *See also Allen v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980); *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 84, 104 S.Ct. 892, 79 L. Ed. 2d 56 (1984); *Pension Trust Fund for Oper. Engineers v. Triple A Machine Shop, Inc.*, 942 F.2d 1457, 1464-1465 (9th Cir. 1991); *Garguili v. Thompkins*, 790 F.2d 265, 269 (2d Cir. 1986); *Fuchsberg & Fuchsberg v. Galizia*, 300 F.3d 105, 109 (2d Cir. 2002); *Vernitron Corp. v. Benjamin*, 440 F.2d 105, 108 (2d Cir. 1971).

3. Pursuant to Section 304(c) of the 1976 Copyright Act, Plaintiffs' March 8, 2002 Notice of Termination regarding "Superboy" terminated the May 19, 1948 Stipulation and the December 23, 1975 Agreement (to the extent such agreements are applicable to "Superboy") resulting in Plaintiffs' recapture of the "Superboy" copyright on November 17, 2004, the noticed termination date.

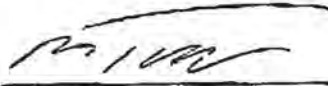
1 17 U.S.C. § 304(c); 37 C.F.R. § 201.10; *See Stewart v. Abend*, 495 U.S. 207,
2 217-20, 110 S.Ct. 1750, 109 L. Ed. 184 (1990); *New York Times v. Tasini*, 533
3 U.S. 483, 121 S. Ct. 2381, 150 L. Ed. 2d 500; *Marvel Characters, Inc. v. Simon*,
4 310 F.3d 280 (2d Cir. 2002).

5
6 4. Plaintiffs are therefore entitled to partial summary judgment in their
7 favor on their first amended supplemental complaint, declaring: (i) that
8 Plaintiffs' Termination with respect to "Superboy" is valid under 17 U.S.C. §
9 304(c); (ii) that Plaintiffs thereby properly terminated the May 19, 1948
10 Stipulation and the December 23, 1975 Agreement (to the extent such
11 agreements are applicable to "Superboy") and (iii) that on November 17, 2004,
12 the noticed Termination date, Plaintiffs recaptured Siegels' original copyright in
13 "Superboy" pursuant to 17 U.S.C. § 304(c).

14
15
16 DATED: _____

Hon. Ronald S.W. Lew
U.S. District Judge

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20 Respectfully Submitted,
21 Law Offices of Marc Toberoff, PLC

22
23 By: 
24 Marc Toberoff
25 Attorneys for Plaintiffs Joanne Siegel and
26 Laura Siegel Larson
27
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 1999 Avenue of the Stars, Suite 1540, Los Angeles, California 90067.

On February 15, 2006, I served the attached documents described as

1. Plaintiffs Joanne Siegel and Laura Siegel Larson's Notice of Motion And Motion For Partial Summary Judgment; Memorandum of Points and Authorities In Support Thereof;
2. Plaintiffs Joanne Siegel and Laura Siegel Larson's Statement of Uncontroverted Facts and Conclusions Of Law;
3. Plaintiffs Joanne Siegel and Laura Siegel Larson's Request For Judicial Notice in Support of Motion for Partial Summary Judgment;
4. Declaration of Marc Toberoff in Support of Plaintiffs' Motion for Partial Summary Judgment
5. [Proposed] Judgment Following Partial Summary Judgment

on all interested parties in this action by placing ____ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

David L. Burg
Weissman Wolff Bergman Coleman Grodin & Evall LLP
9665 Wilshire Blvd., Ninth Floor
Beverly Hills, CA 90212
Facsimile No. 310.550.7191

Roger L. Zissu
James D. Weinberger
Fross, Zelnick, Lehrman & Zissu P.C.
866 United Nations Plaza
New York, New York 10017
Facsimile No.: 212-813-5901

☒ BY FACSIMILE:

As follows: I caused the transmission of the above named document to the fax number set forth above, or on the attached service list.

☒ BY MAIL:

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

:(STATE) - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (FEDERAL) - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on February 15, 2006, in Los Angeles, California.

Nicholas C. Williamson